

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division**

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|------------------------|---|-----------------------|
| In Re: | : | |
| | : | Case Number: 06-31986 |
| JOSEPH GREGORY JEMSEK, | : | |
| | : | Chapter 11 |
| Debtor. | : | |

**APPLICATION FOR AUTHORITY TO EMPLOY ROBERT O. BECK, III AND BECK,
LINDSAY & FRAME, L.L.P. AS ACCOUNTANTS FOR THE DEBTOR PURSUANT TO
SECTIONS 327(a) AND 330 OF THE BANKRUPTCY CODE**

Joseph Gregory Jemsek, the debtor and debtor-in-possession in the above-referenced bankruptcy case (the “Debtor”), through counsel, requests approval of this *Application for Authority to Employ Robert O. Beck, III and Beck, Lindsay & Frame L.L.P. as Accountants for the Debtor Pursuant to Sections 327(a) and 330 of the Bankruptcy Code* (the “Application”) and in support thereof, respectfully shows the Court as follows:

JURISDICTION

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334(b). This is a core proceeding under 28 U.S.C. § 157(b)(2).

BACKGROUND

2. The Debtor filed his voluntary petition for relief pursuant to chapter 11 of the United States Bankruptcy Code on November 20, 2006 (the “Petition Date”).

3. Pursuant to §§ 1107 and 1108 of the United States Bankruptcy Code, the Debtor continues in possession of his properties and the management of his affairs as debtor-in-possession.

4. The Debtor is a physician specializing in the treatment of infectious diseases.

5. The Debtor is owner of the Jemsek Clinic, P.A. d/b/a Jemsek Specialty Clinic,

Lyme and Related Diseases, PLLC (the "Jemsek Clinic"). On October 24, 2006, the Jemsek Clinic filed a voluntary chapter 11 bankruptcy petition in this Court, which case was assigned case number 06-31766.

6. Prior to the Petition Date, the Debtor engaged Robert O. Beck, III and the accounting firm of Beck Lindsay & Frame, L.L.P. (collectively, "Beck") to provide certain accounting services, including services connected with amendments to the Debtor's income tax returns for the years of 2003, 2004 and 2005.

7. In the 90 days before the Petition Date, the Debtor paid Beck \$10,000.00, which reflected the entire amount due to Beck pre-petition. The Debtor's check number 3949 made payable to Beck in the amount of \$10,000.00 was returned by the Scottish Bank due to a freeze instituted by that bank as of the Petition Date pursuant to a claim of a right to setoff. The Court has since approved a settlement between the Debtor and Scottish Bank and has authorized certain creditors, including Beck, to re-deposit pre-petition checks that were not honored.

8. Beck anticipates being employed to provide accounting services to the Jemsek Clinic's bankruptcy estate as well as the Debtor's. Beck has indicated that its claim for pre-petition services provided to the Jemsek Clinic will be waived.

RELIEF REQUESTED

9. This Application is presented pursuant to § 327(a) of the Bankruptcy Code which provides that, with the court's approval, a trustee may employ certain professionals, including accountants, to represent the estate. 11 U.S.C. § 327(a). Section 330 of the Bankruptcy Code provides that the court may award compensation to professionals employed pursuant to § 327 after notice and hearing. 11 U.S.C. § 330(a)(1).

10. The Debtor seeks approval of his retention of Beck as accountants to the Debtor

to provide such services as preparing the Debtor's 2006 income tax returns and consulting with the Debtor and his attorneys regarding tax and accounting issues.

11. It is necessary for the Debtor as debtor-in-possession to employ accountants to provide accounting services to the estate.

12. To the best of the Debtor's knowledge, other than Beck's pre-petition services provided to the Debtor and the Jemsek Clinic as disclosed in the *Affidavit of Robert O. Beck, III* attached hereto, Beck does not hold or represent any interest adverse to the Debtor's estate with respect to the matter on which he is to be employed.

13. Beck has agreed to undertake the Debtor's proposed engagement for compensation at his normal rates to be billed in arrears and paid in accordance with the allowances of the Court pursuant to § 330 of the Bankruptcy Code. The Debtor is informed that Beck's current hourly rates are as follows:

| | | |
|-------------------------|----------------|----------|
| Robert O. Beck, III | CPA | \$295 |
| Elaine Lindsay | CPA | \$250 |
| David Dyer ¹ | CPA | \$132.50 |
| Dawn DiPirro | CPA | \$132.50 |
| Tere   Raines | CPA | \$132.50 |
| S. Juanell Woford | Office Manager | \$66.50 |
| Debi Medino | Clerical Staff | \$44.75 |

14. Beck's policy is to charge clients for expenses incurred in connection with the client's representation. Such expenses include, among other things, any out-of-pocket expenses incurred on a client's behalf such as courier services, outsourced photocopying, conference call charges, and travel (including auto mileage). Beck will bill the Debtor for these expenses in a manner and at rates consistent with charges made generally to Beck's other clients. Payment for such expenses shall be subject to Court approval pursuant to § 330 of the Bankruptcy Code.

¹ On January 1, 2007, Mr. Dyer will be admitted to the firm as a partner and his hourly billing rate will increase to \$250.

NOTICE

15. Notice of this Application has been given to the Bankruptcy Administrator, the Debtor's 20 largest unsecured creditors, and those parties requesting notice pursuant to Bankruptcy Rule 2002.

WHEREFORE, the Debtor prays that the Court will enter an Order authorizing the Debtor to employ Beck as accountants for the debtor-in-possession pursuant to §§ 327(a) and 330 of the Bankruptcy Code and granting such other relief as is just.

This is the 20th day of December, 2006.

/s/ A. Cotten Wright
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: Case Number: 06-31986
JOSEPH GREGORY JEMSEK, :
: Chapter 11
Debtor. _____

**DECLARATION OF PROPOSED ACCOUNTANT
TO BE EMPLOYED BY THE DEBTOR**

Robert O. Beck, III, being duly sworn, deposes and says:

1. I am a certified public accountant ^gat licensed in the states of North Carolina, Tennessee, and Michigan with offices at 4500 Cameron Valley Parkway, Suite 130, Charlotte, NC 28211-3552. I am the founder and managing partner of Beck, Lindsay & Frame, L.L.P., with primary responsibility for the firm's audit, accounting, and consulting practice.
2. As indicated in the *Application for Authority to Employ Robert O. Beck, III and Beck, Lindsay & Frame, L.L.P. as Accountants for the Debtor Pursuant to Sections 327(a) and 330 of the Bankruptcy Code*, my firm and I were engaged to assist Joseph G. Jemsek (the "Debtor") prior to the date of the Debtor's bankruptcy filing and, in connection with that engagement, the Debtor issued a check to my firm for \$10,000.00 pre-petition.
3. Other than as disclosed herein and in the Application, neither my firm nor I have an interest materially adverse to the Debtor, its creditors, or any other party in interest, their respective attorneys and accountants, the Bankruptcy Administrator, or any person employed in the office of the Bankruptcy Administrator with respect to this case by reason of any direct or indirect relationship to, connection with or interest in such persons.
4. My firm and I were engaged to provide pre-petition accounting services to the

Debtor's business, the Jemsek Clinic, which is a debtor in bankruptcy case number 06-31766. I have agreed to waive any claim for pre-petition services rendered to the Jemsek Clinic. I anticipate that my firm and I will be engaged to provide post-petition services to the Jemsek Clinic. Other than as disclosed herein, neither my firm nor I have any interests adverse to those of the estate or the Debtor in the matters upon which I am to be engaged.

5. I have advised the Debtor of my willingness to serve as the Debtor's accountant in exchange for compensation based on time and standard billable hours subject to Court approval pursuant to § 330 of the Bankruptcy Code. My current hourly rate is \$295.00 and is subject to periodic adjustments to reflect economic and other conditions. It may be necessary or advantageous to use other professionals and personnel employed by or associated with me to perform some of the services that required by this proposed engagement.


6. My hourly rate is the standard hourly rate for work of this nature. This rate is set at a level designed to fairly compensate and to cover fixed and routine overhead expenses incurred in connection with the client's case. The expenses charged to clients include, among other things, any out-of-pocket expenses incurred on a client's behalf such as courier services, outsourced photocopying, conference call charges, and travel (including auto mileage). I will charge the Debtor for these expenses in a manner and at rates consistent with charges made generally to my other clients.

7. I have not received any promises as to compensation in connection with this case, other than in accordance with the provisions of the Bankruptcy Code.

8. I do not have any agreement with any other entity to share with such entity any compensation received in connection with my proposed representation of the Debtor.

[Signature on following page.]

This is the 19th day of December 2006.



Robert O. Beck, III
Beck, Lindsay & Frame, L.L.P.

Sworn to before me this 19 day of December, 2006.

Deborah C. Medeiros
Notary Public

My Commission Expires: 3-9-2008